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Verification of the Term "Agricultural Property" in the Light of the Amended Provisions of the Agricultural System Structuring Act of 11 April 2003

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VERIFICATION OF THE TERM “AGRICULTURAL
PROPERTY” IN THE LIGHT OF THE AMENDED
PROVISIONS OF THE AGRICULTURAL SYSTEM
STRUCTURING ACT OF 11 APRIL 2003

INTRODUCTION

According to the provisions of the Agricultural System Structuring Act of 11 April 2003¹ (hereinafter referred to as the ASSA) the purchaser of agricultural property may only be an individual farmer (Article 2a of the ASSA). This is a basic principle of trading in agricultural property, considered as a systemic principle². Other standards that make up the specific rules for the marketing of agricultural

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¹ Unified text Journal of Laws of 2016 item 2052 as amended.

² K. Maj, *Zmiany w ustawie o kształtowaniu rolnego obowiązujące od dnia 30 kwietnia 2016 r.*, „Kra-kowski Przegląd Notarialny” 2016, no. 2, p. 49.

property are connected with the institution of the pre-emption right of agricultural property, the right of pre-emption of shares in a commercial law company which owns agricultural property or the right of acquisition by the National Agricultural Support Center³ of agricultural property for the payment equivalent to a change of shareholder or of a new partner in a partnership which is the owner of agricultural property. The specific rules of trade in agricultural property have been changed by an amendment which entered into force on 30 April 2016⁴.

The application of specific rules for the sale of agricultural property is only possible after it has been established that a particular property is an agricultural property. Verification of property from the point of view of the attributes given by the provisions of the ASSA is the first of the levels of verification that must be carried out by the interpreter of the rules (court, notary, administrative body) when applying them. The remaining stages are to check whether a legal event is included in the catalog of legal events that are subject to specific trade and to determine the extent of the restrictions to which it will be subject. Importantly, one cannot wonder about the scope of trade restrictions if we do not deal with agricultural property within the meaning of the ASSA and the event to which it refers does not belong to the catalog of events subject to particular trade.

This article concentrates on characterizing only one of the stages of verification, i.e. at the stage of determining whether a property to be affected by a legal event meets the characteristics of agricultural property subject to a particular regime, and this is because, from a practical point of view, the most difficult stage.

MULTILAYERED DEFINITION OF AGRICULTURAL PROPERTY; AGRICULTURAL PROPERTY WITHIN THE MEANING OF THE CIVIL CODE

The content of Article 2 point 1 of the ASSA says that agricultural property is an agricultural property within the meaning of the Civil Code, excluding property situated in areas intended for land use planning purposes other than agricultural. This means that in order to determine whether a given property is an agricultural property within the meaning of the ASSA first it should be determined whether it is property within the meaning of the Civil Code. In other words, research whether a given property is an agricultural property within the meaning of the ASSA is multistage and the first step is to determine whether it is an agricultural property within the meaning of Article 46¹ of the Civil Code⁵.

³ Previously Agricultural Property Agency.

⁴ Journal of Laws of 2016, item 585.

⁵ K. Maj, *Zmiany w ustawie ...*, p. 60.

How is the agricultural property determined by the Civil Code? First, agricultural property is a special type of land property⁶, and according to Article 46 of the Civil Code land property is a part of the land area constituting a separate property⁷. Secondly, according to Article 461 of the Civil Code agricultural properties (agricultural land) are properties that are or may be used for agricultural production activities in the field of plant and animal production, including horticultural, orchard and fish production.

It should be emphasized that the definition of the Code of agricultural property (Article 46¹ of the Civil Code) does not refer to the purpose of the real estate set out in the local spatial development plan⁸. For determining it as agricultural land there is the sheer possibility (potential possibility) of using it as broadly understood agricultural activity⁹.

The change of the purpose of agricultural land in the local spatial development plan to other purposes than the agricultural ones does not change the character of such a property within the Civil Code unless the plan explicitly foresees the obligation to change the existing way of development to another, temporary one¹⁰. In the absence of a local plan, the decision establishing the conditions for the development and management of the land (investment decision) cannot deprive the agricultural property the character of the agricultural property within the meaning of the Civil Code¹¹. It is permissible to include in the local spatial development plan and in the

⁶ Z. Truskiewicz, *Nieruchomość rolna i gospodarstwo rolne w rozumieniu U.K.U.R.*, „Krakowski Przegląd Notarialny” 2016, no. 2, p. 142.

⁷ Detailed information on the concept of land property: S. Rudnicki, *The concept of property*, “Rejent” 1994, No. 1, pp. 27-32, there, *O pojęciu nieruchomości w prawie cywilnym*, „Przegląd Sądowy” 1999, No. 9, p. 69-71 and P. Mysiak, *O pojęciu nieruchomości gruntowej*, ‘Rejent’ 2004, No. 8, pp. 130-142, which additionally distinguishes the concept of land property as defined in the Real Estate Management Act.

⁸ As Article 15 sec. 2 of the Act of 27 March 2003 on planning and spatial planning (text of Journal of Laws of 2017, item 1073) says the local spatial development plan is the act of local law, the spatial policy instrument of the municipality defining the local spatial development rules, which includes allocation of land, conditions of land development and development. See Judgment of the NSA in Warsaw of July 15, 1998, (II SA 713/98), LEX No. 41767.

⁹ Resolution of the Supreme Court of December 14, 1984, (III CZP 78/84), OSN 1985, No. 10, item 149; decision of the Supreme Court of January 28, 1998, (III CKN 140/98), LEX 50652; the judgment of June 2, 2000 (II CKN 1067/98), OSP 2001, No. 2, item 27; judgment of 14 November 2001, (II CKN 440/01), OSN 2002, no. 7-8, item 99; Cf. E. Gniewek, *Obligations of a notary public in the light of contemporary limitations in agricultural property trade*, [in:] *Conclusion and performance of contracts. Selected issues*, ed. E. Gniewek, Wrocław 2004, p. 32; E. Gniewek, [in:] E. Gniewek, *Civil Code. Commentary*, Warsaw 2011, p.129.

¹⁰ Article 35 of the Spatial Planning and Management Act of 27 March 2003 (Journal of Laws of 2016, item 778 as amended).

¹¹ Z. Truskiewicz, *The impact of spatial planning on the concept of agricultural real estate as defined by the Civil Code*, “Studio Iuridica Agraria”, vol. VI, Białystok 2007, pp. 146-150; M. Borkowski, Concepts of “agricultural real estate” and “forest real estate” within the meaning of the Act on the acquisition of real estate by foreigners, “Rejent” 2007, No. 7-8, p. 46; W. Grabarek, *Determination of real estate subject to inheritance on the basis of inheritance of agricultural holdings*, “Nowy Przegląd Notarialny” 2005, No. 2, p. 45.

land register¹² only the entries to determine the agricultural land use¹³, keeping in mind that the entries in the land register are declaratory in relation to the way of using the property and are not always updated on a regular basis. It may happen that the status of the registration is incompatible with the actual state, and in that case the assessment of the actual state and not one disclosed in the records settles the matter¹⁴.

It should be noted that 'the criterion for distinguishing an agricultural property is the actual or potential use of it.'¹⁵ Accordingly, the category of agricultural property cannot include those that are not and could not be in the future, even thanks to the agrotechnical treatment, of the character of agricultural property¹⁶.

Accordingly, property which does not have and could not have in the future, even thanks to the agrotechnical treatment the character of agricultural land cannot be classified as agricultural property¹⁷. So it is land allocation, not the way in which the land is actually used which is decisive. Land use does not, however, change the actual exclusion from agricultural use either by legal action (letting, renting, lending) or certain facts (e.g. machines stocking) if the land does not lose its permanent agricultural property character. It also does not lose the characteristics when it can be restored by means of applied treatments, e.g. reclamation. Wastelands may be agricultural land.

It is also difficult to conclude that, in obvious cases, it can be assumed that the property covering agricultural land is not agricultural due to the surface, shape, terrain configuration, location, character of neighboring properties and other circumstances, and at the same time it can be excluded. According to the representatives of this view, the possibility of considering a property an agricultural land, the

¹² According to Article 2 point 8 of the Act of 17 May 1989 geodetic and cartographic law (Journal of Laws of 2015, item 520, as amended), the land and buildings register is an information system ensuring the collection, updating and making available, in a uniform manner for the whole country, the information on land, buildings and premises, their owners and other entities that own or manage these land, buildings and premises.

¹³ E. Skowrońska-Bocian, [in:] K. Pietrzykowski (ed.), *Civil Code. Commentary on Articles 1-449 (11)*, vol. I, Warsaw 2011, p. 194.

¹⁴ The same in K. Maj, *Zmiany w ustawie ...*, p. 68.

¹⁵ Order of the Supreme Court of 16 September 2003 (IV CKN 461/01) LEX No 523605, likewise the Supreme Court in the resolution of 30 May 1996, (III CZP 47/96), ONSC 1996, No 11, item. 142, the order of 6 February 2008, (II CSK 467/07), LEX no. 523605 and the Supreme Administrative Court in Warsaw in the judgment of 23 November 2006, (OSK 132/06)

¹⁶ W. J. Katner, [in:] M. Safian (ed.), *System prawa prywatnego*, t. I: *Prawo cywilne. Część ogólna*, Warsaw 2007, p. 1181 and case law cited there.

¹⁷ Z. Truskiewicz, *Nieruchomość rolna...*, p. 162-163, K. Czerwińska-Koral, *Podział quoad usum nieruchomości rolnej*, Warsaw 2015, p. 18; see also § 68 item 1 Ordinance of 29 March 2001r. on the land and buildings register (Journal of Laws of 2015, item 542); unlikee.g. P. Czechowski, P. Wieczorkiewicz, *Problemy ingerencji prawnej w swobodę obrotu nieruchomościami rolnymi w ustawie o kształtowaniu ustroju rolnego i jej wpływ na interpretacje ustawodawstwa krajowego*, *Studia Iuridica Agraria* 2005, Vol. V, p. 36 and H. Ciepla, *Aspekty prawne obrotu gruntami rolnym od 30.04.2016 r. na nowych zasadach ustalonych w ustawie z dnia 11.04.2013 r. o kształtowaniu ustroju rolnego oraz w ustawie z dnia 14.04.2016 r. o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa*, „Rejent” 2016, no. 9, p. 42.

possibility to use it as agricultural land is not enough. It is necessary to assess all the circumstances through the prism of proper farming, which allows us to assume that the land will at least be used for agricultural production, i.e. on the farm¹⁸.

To assess whether a property is an agricultural property, it does not matter if it is a built-up area. Agricultural real estate is also a built-up land, so: 1) a seat¹⁹, understood as a property (or part thereof), with its buildings, satisfying the housing needs of a farmer and enabling the rational establishment of a farm as an organized economic unit²⁰; 2) other built-up farmland, understood as agricultural property built up outside the seat, serving exclusively agricultural production and agro-food processing²¹.

AGRICULTURAL PROPERTY WITHIN THE MEANING OF THE ASSA

The second stage of verification of agricultural property is whether the property has characteristics of an agricultural property in the sense of the law of the ASSA. The definition of agricultural property is included in Article 2 point 1 of the ASSA. It narrows code concepts of agricultural property. Agricultural properties within the meaning of Article 2 point 1 of the ASSA are not such properties which are agricultural in the sense defined in Article 46¹ of the Civil Code, but in local spatial development plans are intended for non-agricultural purposes²². The concept of agricultural property according to the ASSA is based on two criteria - the regulation contained in Article 46¹ of the Civil Code and location in the area, which is intended for agricultural purposes in spatial development plans²³.

The specific use of land in a local spatial development plan does not always coincide with the boundaries of agricultural land. Furthermore, within a single property, a local spatial development plan may provide for several types of destination. Agricultural property within the meaning of the ASSA therefore, will be an agricultural

¹⁸ Z. Truskiewicz, *Nieruchomość rolna i gospodarstwo rolne...*, pp. 144, 147-148; B. Wierzbowski, *Pojęcie nieruchomości rolnej w prawie polskim*, "Studia Iuridica Agraria" 2005, Volume IV, p. 96 and following; also the Supreme Administrative Court in the judgment of March 20, 2008 (I OSK 435/07, Legalis)

¹⁹ Judgment of the Supreme Court of March 6, 1984, (III CRN 29/84), OSNC 1084, No. 10, item 180; Order of the Supreme Court of April 8, 1997, (I CKN 57/97), OSNC 1997, No. 11, item 66; Order of the Supreme Court of 20 June 1997, (III CKN 45/96), LEX No. 78441; Judgment of the Appeal Court in Łódź of March 14, 1997, (I ACa 111/97), OSA 1998, No. 1, item 5; Judgment of the Supreme Administrative Court in Warsaw of 1 February 1994, (II SA 2143/92), ONSA 1995, No. 2, item 61.

²⁰ K. Czerwińska-Koral, *Podział quoad usum...*, p. 49.

²¹ See detailed considerations on this topic: K. Czerwińska-Koral, *Zabudowane nieruchomości rolne jako przedmiot obrotu*, [in:] *Nieruchomości rolne w praktyce notarialnej*, ed. P. Księżak, J. Mikołajczyk, Warsaw 2017, p. 160 and following.

²² The Supreme Court in the decision of May 15, 2009 II CSK 9/09, Lex No. 518109 and in the judgment of September 5, 2012 (IV CSK 93/12, Legalis) and the Provincial Administrative Court in Bydgoszcz in the judgment of September 23, 2015. (II SA / Bd 730/15, Legalis).

²³ H. Ciepła, *Aspekty prawne ...*, p. 45.

property which is located in the area entirely allocated to the local spatial development plan for agricultural purposes or if the agricultural purposes are, according to the local spatial development plan, its dominant purpose. What's more, within the limits of one property, the local spatial development plan may provide for several types of destination. An agricultural property as defined by the ASSA therefore will be an agricultural property, which is located entirely within the local spatial development plan for agricultural purposes or when the agricultural goals will be - in accordance with the local spatial development plan - its predominant destination²⁴.

An agricultural property as defined by the ASSA is therefore a property that:

- 1) is an agricultural property within the meaning of Article 46¹ of the Civil Code and is at the same time allocated in the local spatial development plan for purposes directly related to agricultural production;
- 2) is an agricultural property within the meaning of Article 46¹ of the Civil Code and it is at the same time located in the area for which there is no local spatial development plan²⁵;
- 3) is an agricultural property within the meaning of Article 46¹ of the Civil Code and is at the same time allocated in the local spatial development plan, partly intended for non-agricultural purposes (it is a non-homogeneous property that is partly used for purposes other than agricultural)²⁶.

It should be remembered that only the current spatial development plan in force on the date of conclusion of the contract of sale is the basis for assessing whether the real estate being the subject of the sale is an agricultural property as defined by the ASSA²⁷. Ultimately, the change in the nature of the property as agricultural within the meaning of the Civil Code is not determined by the change of purpose of the land in the local spatial development plan, but by the decision to exclude a given property from agricultural production. Exclusion of land from agricultural production is understood as the commencement of land other than agricultural or forestry (Article 4 item 11 of the Act of February 3, 1995 on the protection of agricultural and forest land, Journal of Laws of 2015, item 909, as amended).

It may happen that properties designated in the local plan for non-agricultural purposes are used for agricultural purposes, but then we will not have to deal with agricultural land within the meaning of Article 2 point 1 of the ASSA²⁸. A dilemma

²⁴ So the Supreme Court of the judgment of September 5, 2012, IV CSK 93/12, unpublished.

²⁵ J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warsaw 2016, p. 28; E. Klat-Górska, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warsaw 2014, p. 36.

²⁶ Ibidem, p. 45; so in the Supreme Court, judgment of 5 September 2012, IV CSK 93/12, LEX 1229816, where it has been pointed out that the agricultural criteria do not have to be fully met; it's enough that only part of the property meets them; unlike K. Maj, *Zmiany w ustawie ...*, p. 64 who assumes that a given property is an agricultural property only if it is fully allocated as planned for agricultural purposes.

²⁷ E. Klat-Górska, *Ustawa o kształtowaniu ustroju rolnego*, p. 38; also H. Ciepła, *Aspekty prawne...*, p. 45.

²⁸ M. Jarosiewicz, K. Kozikowska, A. Pązik, A. Wujczyk, Ł. Zielińskie, *Prawo rolne. Repetytorium. Testy*, Warsaw 2012, p. 24.

arises whether in the absence of a spatial development plan, the type of property should be determined taking into account the content of the decision on development conditions or other location decision? As it follows from Article 4 sec. 2 of the Act on Spatial Planning in the absence of a local spatial development plan, the definition of development resources and land development conditions takes place by way of a decision on land development and development conditions, whereby:

- 1) the location of a public purpose investment is determined by way of a decision on the location of a public purpose investment;
- 2) the manner of land development and building conditions for other investments is determined by way of a decision on building conditions.

Until now, it has been assumed that if there is no spatial development plan, the purpose of the property should be determined on the basis of the data from the land and building register or the decision on land development conditions. Currently (after 30 April, 2016), it should be recognized that „in the case of no spatial development plan, the definition contained in Article 461 of the Civil Code is considered decisive in the nature of the property as an agricultural property and the application of the provisions of the Act. The Act does not introduce a presumption that the lack of a spatial development plan or its out-of-date status will determine that the property is agricultural. The scope of the Act does not include property which, due to its nature, is not or cannot be used for agricultural purposes, e.g. housing property as well as property with residential buildings, other buildings, structures or equipment not used for agricultural production – including the land adjacent to them enabling their proper use, internal roads, property located under parks and gardens entered into the register of monuments. Property and data records from the land and building registry may be helpful in qualifying the property²⁹”.

It should be stated that the lack of uniformity of views is noticeable in the matter of the possibility of determining the nature of property based on decisions on the development conditions. Part of the doctrine thinks that the decision on the conditions of land development and spatial development is the basis for determining the purpose of the property for purposes other than agricultural ones³⁰, others think – it is not³¹. There are a few arguments in favour of the second opinion.

Firstly, it should be pointed out that the same area can be subject to a decision on land development and development conditions for many applicants and the same applicant can once again submit an application for the same area, provided that another investment is the subject of the application³².

²⁹ The position of the State National Council (SNC) on the application in practice of a notarial act on shaping the agricultural system issued in 2016.

³⁰ G. Bieniek, *Kształtowanie ustroju rolnego*, [in:] G. Bieniek, S. Rudnicki, *Nieruchomości. Problematyka prawna*, Warsaw 2011, p. 139; K. Maj, *Zmiany w ustawie ...*, p. 65.

³¹ E. Klat-Górska, *Ustawa o kształtowaniu ustroju rolnego...*, p. 40-41; K. Czerwińska-Koral, *Pojęcie nieruchomości rolnej jako wyznacznik zasad obrotu nieruchomościami rolnymi*, „Rejent” 2016, no. 6, p. 68.

³² E. Klat-Górska, *Ustawa o kształtowaniu ustroju rolnego...*, p. 40-41.

Secondly, by the very fact of issuing a decision on the spatial development and land development conditions, the given property does not change its nature and does not become non-agricultural from the agricultural one. The issuance of such a decision does not result in a “de-agriculturalization” of the plot “by itself”³³. The decision on land development conditions cannot lead to a change in the purpose of the land, which can only take place by means of a local spatial development plan. The role of the decision on development conditions is to determine that in a given area, taking into account its current use, it is possible to implement a given investment. Thus, it is impossible to obtain a decision on development conditions in a situation where it is required to obtain a decision on the exclusion of the land from agricultural production based on the provisions of the Act on Protection of Agricultural and Forest Land. This condition does not apply to situations in which the planned investment does not change the agricultural use of the land, and then there are no obstacles to the decision on the conditions of land development³⁴.

Thirdly, the decision on land development conditions does not constitute grounds for changing the entry in the land register from the agricultural property to non-agricultural one. This basis is only determined by the surveyor’s boundaries of the building after obtaining a building permit³⁵.

Further, one cannot miss the fact that the legislator, when defining the agricultural property in Art. 2 point of the ASSA, referred solely to the findings of the local spatial development plan, not mentioning the decision on land development conditions (and other decisions). It is indicated by the content of Art. 2 of the Act of 14 April 2016 on withholding the sale of property of the Agricultural Property Resource of the State Treasury and amending certain acts³⁶ (further known as: w.s.p. APRST), where we have a clear reference in addition to the land special development plan to the study of the conditions and directions of the spatial development of the municipality and to the final decision on the conditions of spatial development and land development, it should be recognized that in Art. 2 point 1 of the ASSA, it is only about spatial development plans.

³³ See Art. 59 section 1 and 2a of the Act on Spatial Development Planning.

³⁴ J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego...*, p. 41.

³⁵ H. Ciepła, *Aspekty prawne...*, p. 42.

³⁶ Article 2 section 1 on the provision of Art. 1 does not apply to the sale of:

1) properties and their parts dedicated in:

a) local spatial development plan or

b) study of conditions and directions of the spatial development of the municipality, or

c) final decision on the conditions of land development

– for purposes other than agricultural ones, in particular for technology parks, industrial parks, business and logistics centers, warehousing facilities, transport investments, housing, sports and recreation facilities, or

2) properties located within the borders of the special economic zones, or

3) houses, residential buildings, outbuildings and garages with the necessary lands and backyard gardens, or

4) Agricultural properties of the area up to 2 ha.

In addition, in the second paragraph of Art. 11 of the Act of 14 April 2016 on withholding the sale of property of the Agricultural Property Resource of the State Treasury and change of some acts³⁷ we read that agricultural properties which on the day of entry into force of the Act, in final decisions on spatial development and land development conditions are intended for purposes other than agricultural purposes were also excluded from under the influence of the ASSA. It follows that it is about lands which are not located within the area included in the local special development plan and at the same time a final decision was made on them regarding the conditions of spatial development and land development, from which it follows that they are intended for non-agricultural purposes. Therefore, they are not an agricultural property in the understanding of the ASSA.

In addition, it should be noted that at the stage of adopting the act amending the ASSA³⁸, it was proposed to include in this definition the words “and in the absence of such a plan intended for other than agricultural purposes on the basis of final decisions”³⁹, and despite the amendments submitted by deputies in this regard, the legislator did not decide to introduce such changes to the definition of agricultural properties⁴⁰. Therefore, since the legislator did not refer to the decision, it must be assumed that this is not an oversight but an intended purpose.

It seems wrong to think that if a significant part of the territory of Poland does not have any spatial development plans drawn up, and the land development conditions replace this plan as a matter of fact, the recognition that they do not exclude the land from the concept of agricultural property, leads to the inhibition of the trade⁴¹.

VERIFICATION OF AN AGRICULTURAL PROPERTY IN TERMS OF THE AREA

After confirming that we are dealing with an agricultural property in the meaning of the ASSA, one should proceed to the subsequent level of the study i.e. the determination of the property area. Admittedly, since the entry into force of the amendment to the Civil Code of 1990⁴² the area criterion is not a determinant of the category of agricultural property, and this is also the case for the definition of agricultural property in terms of

³⁷ Journal of Laws of 2016, item 585.

³⁸ The Act of 14 April 2016 on the withholding the sale of the Agricultural Property Reserve of the State Treasury.

³⁹ M. Korzycka, *Analiza prawna przepisów ustawy o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa oraz o zmianie niektórych ustaw zwana dalej ustawą* (senateprint no. 124), www.senat.gov.pl/prace/senat/opinie-i-ekspertyzy/.

⁴⁰ See e.g. amendment by senator P. Florek [in:] *Sprawozdanie Komisji Ustawodawczej oraz Komisji Rolnictwa i Rozwoju Wsi (wraz z zestawieniem wniosków)*, Warsaw on 13 April 2016 r., Print no. 124 Z, published on the website of the Senate of the Republic of Poland on 13 April 2016.

⁴¹ *Ibidem*, p. 43.

⁴² Act of 28 July 1990 on act amendment–Civil Code (Journal of Laws no. 55, item 231).

Art. 2 point 1 of the ASSA, however, in accordance with Art. 1a of the ASSA, the provisions of the Act do not apply, among others, to agricultural properties with an area of less than 0.3 ha. The buyer of any agricultural property with an area larger than 0.3 ha can only be an individual farmer. It means that, the ASSA does not introduce any restrictions on trade in agricultural properties to the area of up to 0.3 ha. Therefore, the sale of a part of an agricultural property with an area of 0.3 ha requires the prior separation of such a plot by means of a registered division of the property provided for by the provisions of the Act of 21 August 1997 on property management⁴³. However, it cannot be assumed that the division of the agricultural land by separating from it a plot of land up to 0.3 ha can be made repeatedly until the area is completely depleted, because it would lead to the circumvention of the provisions of the Act⁴⁴.

The minimum area standard was also introduced in the definition of an agricultural household, as in accordance with Art. 2 point 2 an agricultural household, as defined by the ASSA, should be understood as an agricultural household within the meaning of the Civil Code⁴⁵, in which the area of the agricultural property is not less than 1 ha⁴⁶. At the same time, it should be remembered that according to Art. 4a of the ASSA, the provisions of the Act shall apply accordingly to the acquisition of an agricultural household. As it results from Art. 2 point 2 of the ASSA, for the purpose of this act, an agricultural household should be understood as an agricultural household within the meaning of the Civil Code, in which the area of an agricultural property is not less than 1 ha.

CONCLUSION

The provisions of the Act of 11 April 2003 on shaping the agricultural system changed by the amendment, which entered into force on 30 April 2016, provided for a special regime concerning trade in agricultural properties. As it turns out in practice, the application of these provisions is not easy. The regulations are constructed in several stages, i.e. to apply the special principles of the turnover, it is first necessary to determine whether the property is an agricultural property within the meaning of the Act and whether the event the property relates to is subject to a special regime.

The very definition of whether a property is an agricultural property in the sense of the ASSA also is a multistage action. The definition of an agricultural property first

⁴³ Uniform text Journal of Laws of 2015, item 1774.

⁴⁴ H. Ciepla, *Aspekty prawne...*, p. 40.

⁴⁵ In the wording given in the Act of 14 February 2003 amending the Civil Code and certain other acts (Journal of Laws No. 49, item 408). - According to Art. 55 of the Civil Code, an agricultural holding is understood as agricultural land with forest land, buildings or their parts, equipment and stock if they constitute or may constitute an organized economic whole and rights related to running a farm.

⁴⁶ In the Act, we have the maximum area standard, i.e. 300 ha of agricultural land (Article 2a section 2 and Article 5 section 1).

refers to the Civil Code, and then - by reference to the local spatial development plan - it narrows down. The reference to the code definition does not make it easier for the interpreter because the definition provided there is not precise and unambiguous. The reference to the potential use to conduct agricultural production ("it is or may be used to conduct production activity in agriculture") indicates the need for the interpreter to conduct some kind of investigation in order to determine this possibility.

It should be added that having no spatial development plans in Poland complicates the possibility of the property verification, since the legislator applied the criterion that does not apply to all properties. It should be postulated that the narrowing of the definition of agricultural property would be a reference not only to the local spatial development plan, but – in its absence – also in the final decisions on the location of the public purpose or decision on development conditions (location decisions).

The above points to the pains in the process of determining whether a property whose legal event concerns, should be subject to the special regime provided for by the ASSA and may cause practical difficulties and, thus, destabilize the trading confidence.

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Summary: The Agricultural System Structuring Act of 11 April 2003 which was amended as of 30 April 2016 implemented a special regime concerning trading in agricultural properties. The provisions are constructed on multiple levels, which means that in order to apply the special rules of trading, you first need to determine whether or not a given property is an agricultural property within the meaning of the said Act and whether the event concerning the property is subject to the special regime. The process of defining whether or not a property is an agricultural property within the meaning of the Agricultural System Structuring Act also takes place in several stages. It is because the definition of the agricultural property refers to the Civil Code, and it is then narrowed by making a reference to the spatial development plan. This implies that the process of applying the Act is arduous and may lead to difficulties in practice, thus destabilizing the certainty of the transactions.

Keywords: Agricultural property, trading in agricultural properties, spatial development plan, farming house, decision on land development conditions, land registry

WERYFIKACJA POJĘCIA NIERUCHOMOŚCI ROLNEJ W ŚWIETLE ZNOWELIZOWANYCH PRZEPISÓW USTAWY Z DNIA 11 KWIETNIA 2003 ROKU O KSZTAŁTOWANIU USTROJU ROLNEGO

Streszczenie: W znowelizowanych z dniem 30 kwietnia 2016 r. przepisach ustawy z dnia 11 kwietnia 2003 roku o kształtowaniu ustroju rolnego wprowadzony został przewidziany szczególny reżim dotyczący obrotu nieruchomościami rolnymi. Przepisy skonstruowane są wielostopniowo, tj. aby zastosować szczególne zasady obrotu, w pierwszej kolejności należy ustalić, czy nieruchomość jest nieruchomością rolną w rozumieniu ustawy i czy zdarzenie, którego nieruchomość dotyczy, podlega szczególnemu reżimowi. Samo określenie, czy nieruchomość jest nieruchomością rolną w rozumieniu u.k.u.r., też jest działaniem wielostopniowym. Definicja nieruchomości rolnej odnosi się bowiem do Kodeksu cywilnego, a następnie – poprzez odwołanie do planu zagospodarowania przestrzennego – zawęża. Powyższe wskazuje na mozolność procesu stosowania ustawy i może powodować trudności w praktyce, a tym samym destabilizować pewność obrotu.

Słowa kluczowe: nieruchomość rolna, obrót nieruchomościami rolnymi, plan zagospodarowania przestrzennego, siedlisko, decyzja o warunkach zabudowy, ewidencja gruntów